

FILED

UNITED STATES COURT OF APPEALS

OCT 02 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

INSTITUTE OF CETACEAN  
RESEARCH, a Japanese research  
foundation; et al.,

Plaintiffs - Appellants,

v.

SEA SHEPHERD CONSERVATION  
SOCIETY, an Oregon nonprofit  
corporation and PAUL WATSON, an  
individual,

Defendants - Appellees.

No. 12-35266

D.C. No. 2:11-cv-02043-RAJ  
Western District of Washington,  
Seattle

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Defendant-Appellee Paul Watson's motion to permit trial testimony by telephone is denied. The court would benefit from observing Watson's demeanor while testifying, and the plaintiffs should be able to cross-examine Watson with evidence produced at the hearing and not divulged in advance.

Defendants-Appellees may move to allow Watson to appear by video transmission. *See* Fed. R. Civ. P. 43(a) advisory committee's note (1996 amendment) ("Video transmission ordinarily should be preferred when the cost is

reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission.”). Any further motion should also identify a procedure by which any impeachment evidence would be transmitted to Watson in real time during cross-examination.